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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FAUSTO MARTIN MENDOZA, Plaintiff, -against- PIZZA MERCATO INC. d/b/a PIZZA MERCATO, VAN HAKUMARANI, and JOHN DOE, Defendants.	:	**COMPLAINT**

Plaintiff Fausto Martin Mendoza ("plaintiff" or "Mendoza"), by his attorneys, Pechman Law Group PLLC, complaining of defendants Pizza Mercato Inc. d/b/a Pizza Mercato ("Pizza Mercato"), Van Hakumarani, and John Doe (collectively, "defendants"), alleges:

NATURE OF THE ACTION

1. Throughout Mendoza's employment at Pizza Mercato as a food preparer and deliveryman, defendants paid Mendoza a set weekly salary and failed to pay him overtime for the hours he worked over forty hours per workweek as required by the Fair Labor Standards Act ("FLSA"), and the New York Labor Law ("NYLL"). Defendants also failed to pay Mendoza spread-of-hours pay, reimburse him for the costs of tools of the trade, and timely provide him with wage notices or wage statements, in violation of NYLL and the New York Wage Theft Prevention Act ("WTPA").

2. Mendoza brings this action to recover unpaid overtime wages, unpaid spread-of-hours pay, costs of tools of the trade, liquidated damages, pre- and post-judgment interest, attorneys' fees and costs pursuant to the FLSA, NYLL, and WTPA.

JURISDICTION

3. This Court has subject matter jurisdiction of this case pursuant to 29 U.S.C. § 216(b), 28 U.S.C. § 1331, and 28 U.S.C. § 1337, and has supplemental jurisdiction over plaintiff's claims under the NYLL pursuant to 28 U.S.C. § 1367.

VENUE

4. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. § 1391, because all events giving rise to this action and alleged in the Complaint occurred at Pizza Mercato, which is located, and operated by defendants, in the Southern District of New York.

THE PARTIES

Plaintiff

5. Fausto Martin Mendoza resides in the Bronx, New York.

6. Defendants employed Mendoza as a food preparer and delivery person at Pizza Mercato from 2007 to October 23, 2016.

Defendant Pizza Mercato Inc.

7. Defendant Pizza Mercato Inc. is a New York corporation that owns, operates, and does business as Pizza Mercato, a restaurant located at 11 Waverly Place, New York, New York 10003.

8. Pizza Mercato has employees engaged in commerce or in the production of goods for commerce and handling, selling, or otherwise working on goods or materials that have been moved in or produced for commerce by any person.

9. Pizza Mercato has an annual gross volume of sales in excess of $500,000.

10. Pizza Mercato is an "enterprise engaged in interstate commerce" within the meaning of the FLSA.

Defendant Van Hakumarani

11. Van Hakumarani ("Hakumarani") owns Pizza Mercato.

12. Upon information and belief, Van Hakumarani's aliases are Vasanthakuma Selvarajan and Van Selvan ("Selvan").

13. Hakumarani is listed as the proprietor of Pizza Mercato in online business directories Manta.com and BuzzFile.com.

14. Under the name Selvan, Hakumarani represents himself in online profiles for LinkedIn and for business review sites Yelp and TripAdvisor to be the owner and manager of Pizza Mercato.

15. Since 1994, Hakumarani has owned and operated Pizza Mercato through multiple corporate entities, including VMF Enterprises, Inc., which is now dissolved.

16. Throughout Mendoza's employment, Hakumarani had the authority to hire and fire employees, direct the manner in which employees performed their daily duties and assignments, and establish and implement the pay practices and work and scheduling policies at Pizza Mercato.

17. Hakumarani hired Mendoza to work at Pizza Mercato in 2007.

18. Hakumarani is an "employer" within the meaning of the FLSA and NYLL.

Defendant John Doe

19. John Doe is a co-owner and manager of Pizza Mercato.

20. John Doe's true name is unknown, but is known informally to Mendoza as Sudakaram.

21. Throughout Mendoza's employment, Doe had the authority to hire and fire employees, direct the manner in which employees performed their daily duties and

assignments, and establish and implement the pay practices and work and scheduling policies at Pizza Mercato.

22. Doe is an "employer" within the meaning of the FLSA and NYLL.

FACTUAL ALLEGATIONS

23. From Spring 2007 to October 23, 2016, except for a three-month period in 2009, defendants employed Mendoza as a food preparer and delivery person at Pizza Mercato.

24. Pizza Mercato serves a wide variety of pizza and other Italian food and, because of its convenient location, is well-known and frequented by New York University ("NYU") students at all hours of the day.

25. Pizza Mercato is open every day of the week, 10:30 a.m. to 11:00 p.m.

26. From Spring 2007 to in or about June 2009, Mendoza worked a regular schedule at Pizza Mercato of Monday through Friday, from 4:00 p.m. to 11:00 p.m., and on Saturday and Sunday, from 12:00 p.m. to 11:00 p.m., totaling fifty-seven hours per week.

27. During this period, defendants paid Mendoza a weekly salary of $350.00.

28. Mendoza did not work at Pizza Mercato for a three-month period, from approximately June to August 2009.

29. From in or about September 2009 to October 23, 2016, Mendoza worked a regular schedule at Pizza Mercato of six days per week from 12:00 p.m. to 11:00 p.m., totaling sixty-six hours per week. Defendants paid Mendoza a weekly salary of $450.00.

30. Defendants reduced Mendoza's scheduled hours for the months between May and August, when NYU students were away for summer break, except in 2013.

31. When business slowed each summer, except in 2013, Mendoza worked a regular schedule at Pizza Mercato of Monday through Friday, from 12:00 p.m. to 8:00 p.m., and Sunday from 12:00 p.m. to 11:00 p.m., totaling fifty-one hours per week.

32. When Mendoza worked this lighter summer schedule, defendants paid him a weekly salary of $350.00.

33. Throughout his employment at Pizza Mercato, Mendoza spent more than twenty percent of his workday working as a food preparer.

34. Defendants did not pay Mendoza at the rate of one and one-half times his hourly wage rate for hours worked in excess of forty per workweek.

35. Defendants did not compensate Mendoza with one hour's pay at the basic minimum hourly wage rate for each day his shift spread over more than ten hours.

36. Defendants also required Mendoza to purchase and maintain tools of the trade to perform his duties as a delivery person, including a bicycle, a bicycle lock, and replacement tire tubes. Throughout the course of his employment, Mendoza spent approximately $500.00 to purchase and maintain these items.

37. Defendants paid Mendoza his wages weekly, in cash, without accompanying wage statements.

38. Defendants did not furnish Mendoza with annual wage notices at the time of his hiring or whenever there was a change in his wages.

FIRST CLAIM
(Fair Labor Standards Act – Unpaid Overtime)

39. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

40. Defendants are employers within the meaning of the FLSA.

41. Throughout his employment, Mendoza was engaged in commerce or in the production of goods for commerce on behalf of defendants.

42. Mendoza is a non-exempt "employee" within the meaning of the FLSA.

43. Defendants were required to pay plaintiff one and one-half (1½) times his regular hourly wage rate for all hours worked in excess of forty hours in a workweek pursuant to the overtime wage provisions of 29 U.S.C. § 207 *et seq*.

44. Defendants failed to pay plaintiff the overtime wages to which he was entitled under the FLSA.

45. Defendants willfully violated the FLSA by knowingly and intentionally failing to pay plaintiff overtime wages.

46. Due to defendants' violations of the FLSA, plaintiff is entitled to recover his unpaid overtime wages, liquidated damages, reasonable attorneys' fees and costs of the action, and pre- and post-judgment interest.

SECOND CLAIM
(New York Labor Law – Unpaid Overtime)

47. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

48. Mendoza is a non-exempt "employee" within the meaning of the NYLL.

49. Under New York State Department of Labor ("NYDOL") regulations, including 12 N.Y.C.R.R. §§ 137-1.3, 146-1.4, defendants were required to pay plaintiff one and one half (1½) times his regular hourly wage rate for all hours that plaintiff worked in excess of forty per workweek.

50. Defendants failed to pay plaintiff the overtime wages to which he was entitled under the NYLL and its supporting regulations.

51. Defendants willfully violated the NYLL and its supporting regulations by knowingly and intentionally failing to pay plaintiff overtime wages.

52. Due to defendants' willful violations of the NYLL, plaintiff is entitled to recover his unpaid overtime wages, reasonable attorneys' fees and costs of the action, liquidated damages, and pre- and post-judgment interest.

THIRD CLAIM
(New York Labor Law – Spread-of-Hours Pay)

53. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

54. Defendants willfully failed to pay plaintiff additional compensation of one hour's pay at the basic minimum hourly wage rate for each day during which plaintiff's shifts spread over more than ten hours.

55. By defendants' failure to pay plaintiff spread-of-hours pay, defendants willfully violated the Section 650 *et seq.*, of the NYLL and violated the supporting NYDOL regulations, including, but not limited to, 12 N.Y.C.R.R. §§ 137-1.7, 3.10, and 146-1.6.

56. Due to defendants' willful violations of the NYLL, plaintiff is entitled to recover an amount prescribed by statute, reasonable attorneys' fees and costs of the action, pre- and post-judgment interest, and liquidated damages.

FOURTH CLAIM
(New York WTPA – Unlawful Deductions)

57. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

58. New York Labor Law § 193(1) prohibits employers from making any deductions from an employee's wages except for those permitted by law.

59. Defendants have willfully violated the NYLL and supporting NYDOL regulations by knowingly and intentionally requiring plaintiff to purchase and maintain bicycles and accessories to be used during the course of his employment.

60. Defendants have been agents or officers of a corporation within the meaning of NYLL § 196-d and supporting NYDOL regulations.

61. As a result of defendants' willful violations of the NYLL, plaintiff is entitled to recover from defendants payments made by separate transaction for required work materials, reasonable attorneys' fees, liquidated damages, and pre- and post-judgment interest.

FIFTH CLAIM
(New York WTPA – Failure to Provide Annual Wage Notices)

62. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

63. The WTPA, as incorporated into the NYLL, as well as the NYLL's interpretative regulations, such as but not limited to 12 N.Y.C.R.R. Part 146, require employers to provide all employees with a written notice of wage rates, in the employees' native language, at the time of hire and whenever there is a change to an employee's rate of pay.

64. In violation of NYLL § 191, defendants failed to furnish plaintiff, at the time of hiring and whenever there was a change to rates of pay, with wage notices containing the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main office or principal place of business, and a mailing address if different; the telephone number of the employer, and anything otherwise required by law; in violation of the NYLL § 195(1).

65. Due to defendants' violation of NYLL § 195(1), plaintiff is entitled to recover from defendants liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to the NYLL § 198(1-b).

SIXTH CLAIM
(NYLL Wage Theft Prevention Act – Failure to Provide Wage Statements)

66. Plaintiff repeats and realleges all foregoing paragraphs as if set forth herein.

67. The NYLL and WTPA require employers to provide employees with an accurate wage statement each time they are paid.

68. Throughout plaintiff's employment with defendants, defendants paid plaintiff without providing a wage statement at the end of every pay period accurately listing, *inter alia*: the regular and overtime rate or rates of pay; the number of regular and overtime hours worked per pay period; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; and net wages, in violation of the NYLL § 195(3).

69. Due to defendants' violation of NYLL § 195(3), plaintiff is entitled to recover from defendants liquidated damages, reasonable attorneys' fees, and costs and disbursements of the action, pursuant to the NYLL § 198(1-d).

PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully requests that this Court enter a judgment:

a. declaring that defendants have violated the overtime wage provisions of the FLSA, NYLL, and NYDOL regulations;

b. declaring that defendants have violated the spread-of-hours pay provisions of the NYLL and NYDOL regulations;

c. declaring that defendants violated the provision of the NYLL prohibiting unlawful deductions from wages;

d. declaring that defendants violated the notice and record-keeping provisions of the NYLL and WTPA;

e. declaring that defendants willfully violated the FLSA and NYLL;

f. enjoining future violations of the FLSA and NYLL by defendants;

g. awarding plaintiff damages for unpaid overtime wages;

h. awarding plaintiff damages for unpaid spread-of-hours wages;

i. awarding plaintiff damages for unlawful deductions;

j. awarding plaintiff liquidated damages in an amount equal to two times the total amount of the wages found to be due pursuant to the FLSA and the NYLL;

k. awarding plaintiff statutory damages as a result of defendants' failure to furnish plaintiff with accurate wage statements pursuant to the NYLL and the WTPA;

l. awarding plaintiff statutory damages as a result of defendants' failure to furnish plaintiff with annual notices pursuant to the NYLL and the WTPA;

m. awarding plaintiff pre- and post-judgment interest under the NYLL;

n. awarding plaintiff reasonable attorneys' fees and costs pursuant to the FLSA and the NYLL; and

o. awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York
November 30, 2016

PECHMAN LAW GROUP PLLC

By: ______________________________

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